

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations

3 DANIEL N. YANNUZZI (Cal. Bar No. 196612)
dyannuzzi@sheppardmullin.com

4 MICHAEL MURPHY (Cal. Bar No. 234695)
mmurphy@sheppardmullin.com

5 Sheppard Mullin Richter & Hampton LLP
12275 El Camino Real, Suite 200
6 San Diego, California 92130
Telephone: (858) 720-8900
7 Facsimile: (858) 509-3691

8 Attorney for Plaintiff
PERFORMANCE DESIGNED
9 PRODUCTS LLC.

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13

14 PERFORMANCE DESIGNED
PRODUCTS LLC,
15 a California limited liability company,
16 Plaintiff,

17 v.

18 MAD CATZ, INC.,
a Delaware corporation, and
19 DOES 1–10, inclusive,
20 Defendants.
21

Case No. **'16CV0629 GPC RBB**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Performance Designed Products LLC (“PDP”) complains and alleges
2 as follows against Defendant Mad Catz, Inc. (“Mad Catz”).

3 **THE PARTIES**

4 1. Plaintiff PDP is a California limited liability company, having a
5 principal place of business at 2300 West Empire Avenue, Suite 600, Burbank,
6 California 91504.

7 2. On information and belief, Defendant Mad Catz, Inc. (“Mad Catz”) is a
8 Delaware corporation, having a principal place of business at 10680 Trenea Street,
9 Suite 500, San Diego, California 92131.

10 3. The true names, identities and capacities, whether individual, associate,
11 corporate or otherwise, of Defendants DOES 1 to 10, inclusive, and each of them
12 (“the DOE Defendants”), are unknown to PDP at this time, who therefore sues the
13 DOE Defendants by such fictitious names. When the true names and capacities or
14 participation of the DOE Defendants are ascertained, PDP will amend this complaint
15 to assert the true names, identities and capacities. PDP is informed and believes and
16 thereon alleges that each of the DOE Defendants sued herein is responsible for the
17 wrongful acts alleged herein, and is therefore liable to PDP in some manner for the
18 events and happenings alleged in this complaint. PDP is informed and believes and
19 thereon alleges that at all times herein mentioned, the DOE Defendants were and are
20 doing business and/or residing in this District.

21 **NATURE OF THE ACTION**

22 4. This is a civil action against Defendants for infringement of United
23 States Design Patent Numbers D624,078 (“the ’D078 Patent”) arising under the
24 patent laws of the United States, Title 35 of the United States Code.

25 **JURISDICTION AND VENUE**

26 5. This Court has original subject matter jurisdiction of this action under
27 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338(a) and (b) (any Act of
28 Congress relating to patents).

1 6. This Court has specific and general personal jurisdiction over
2 Defendants pursuant to due process and/or the California Long Arm Statute because
3 Defendants are California entities with their principal place of business in California
4 and within this judicial district, have committed and continue to commit acts of
5 infringement in violation of 35 U.S.C. §§ 271(a), (b), and (c), and place infringing
6 products into the stream of commerce, with the knowledge or understanding that
7 such products are sold in the State of California, including in this judicial district.
8 On information and belief, Defendants derive substantial revenue from the sale of
9 infringing products within this judicial district, expect their actions to have
10 consequences within this judicial district, and derive substantial revenue from
11 interstate and international commerce, including within this judicial district.

12 7. Venue is proper within this judicial district under 28 U.S.C. § 1391(b)
13 because a substantial portion of the events giving rise to the claims for relief stated
14 in this Complaint arose in this judicial district. Specifically, Defendants have sold
15 or offered for sale infringing products in this district. Furthermore, Plaintiff PDP
16 maintains a business office within this district and has suffered harm within this
17 district.

18 **BACKGROUND FACTS**

19 8. Plaintiff PDP is a Burbank-based company that designs and
20 manufactures video game accessories. PDP has been supplying video game
21 accessories to the market for over a decade and has additional offices and facilities
22 in San Diego, California, China, Hong Kong, France and the United Kingdom.
23 Customers use PDP's high quality products in many places throughout the world,
24 including the United States, Canada, Mexico, Europe, and Asia. PDP is an
25 innovator in the field of video game accessories and holds multiple patents,
26 including the 'D078 Patent. Attached as **Exhibit A** is a copy of the 'D078 Patent.

27 9. On information and belief, Defendant Mad Catz is a worldwide
28 provider of video game accessories. On information and belief, Mad Catz's

1 products are on sale and in use throughout the United States, including in the State
2 of California and this district. Mad Catz offers for sale the “Fight Pad Pro
3 Controller” in this district and throughout the United States¹.

4 10. On information and belief, Mad Catz has used, imported into, sold, or
5 offered for sale in the United States its accused controllers, which infringe the
6 ‘D078 Patent. Mad Catz has not obtained permission from PDP to use, import, sell,
7 or offer PDP’s designs claimed in the ‘D078 Patent. Mad Catz had many options in
8 developing the accused controller. Nevertheless, Mad Catz chose to willingly
9 infringe PDP’s designs claimed in the ‘D078 Patent by making, using, selling or
10 offering for sale, and/or importing its Fight Pad Pro Controller product during the
11 term of PDP’s ‘D078 Patent.

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

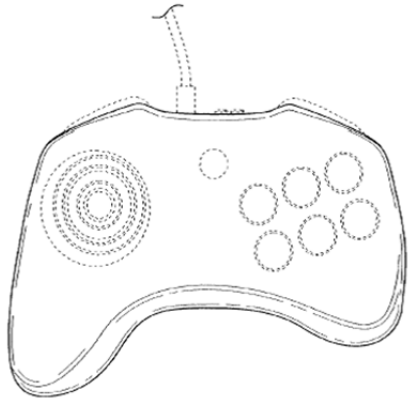

20 //

21 //

22 //

23
24
25
26
27 ¹ Mad Catz’s marketing materials inconsistently refer to the accused product as the Fight
28 Pad Pro Controller and the FightStick TE2. For removal of doubt, PDP accuses te product
shown in the picture attached to Paragraph 11 of infringement.

11. Mad Catz's Fight Pad Pro Controller has an overall appearance that is confusingly similar and substantially the same, in view of the prior art and in the eyes of an ordinary observer, as PDP's Fight Pad for Xbox One controller (and the designs claimed in the 'D078 Patent), as demonstrated by the side-by-side comparison below:

PDP Patented Design	Mad Catz Product
 <p>FIG. 2</p>	

FIRST CAUSE OF ACTION

Infringement of Design Patent 'D078

12. PDP incorporates and realleges Paragraphs 1 through 20 of this Complaint.

13. Under 35 U.S.C. § 271(a), Defendants have infringed and continue to infringe, literally or under the doctrine of equivalents, the 'D078 Patent by making, using, selling, and/or offering to sell in the United States, and/or importing into the United States the Fight Pad Pro Controller identified in this Complaint, which controller embodies the design covered by the 'D078 Patent.

14. On information and belief, Defendants have gained profits by virtue of their infringement of the 'D078 Patent.

15. On information and belief, PDP has sustained damages as a direct and proximate result of Defendants' infringement of the 'D078 Patent, and, as such, PDP is entitled to damages pursuant to 35 U.S.C. §§ 284 and/or 289.

16. Moreover, PDP is informed and believes that Defendants' infringement of the 'D078 Patent is and has been willful. On information and belief, Defendants have acted and continue to act with objective recklessness by proceeding despite an objectively high likelihood that their actions constitute infringement of PDP's valid patents, and Defendants are aware of PDP's patents, including the 'D078 Patent, and know of the high likelihood that they cover Defendants' products.

17. This is an exceptional case warranting an award of treble damages to PDP under 35 U.S.C. § 284, and an award of attorneys' fees under 35 U.S.C. § 285.

18. On information and belief, PDP will suffer and is suffering irreparable harm from Defendants' infringement of the 'D078 Patent. PDP has no adequate remedy at law and is, under 35 U.S.C. § 283, entitled to an injunction against Defendants' continuing infringement of the 'D078 Patent. Unless enjoined, Defendants will continue their infringing conduct.

PRA YER

WHEREFORE, PDP prays:

(a) For a judgment that Defendants have infringed PDP's 'D078 Patent:

(b) For an order and judgment preliminarily and permanently enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity, active concert, or participation with any of them, and their parents, subsidiaries, divisions, successors and assigns.

1 who receive actual notice of the judgment by personal service or otherwise, from
2 further acts of infringement of PDP's 'D078 Patent;

3 (c) That Defendants be directed to file with this court, within thirty
4 (30) days after entry of any injunction in this case, a written statement, under oath,
5 setting forth in detail the manner in which Defendants have complied with the
6 injunction;

7 (d) For a judgment awarding PDP all damages, in an as yet
8 undetermined amount, adequate to compensate for Defendants' infringement of
9 PDP's 'D078 Patent, and in no event less than a reasonable royalty for Defendants'
10 acts of infringement, including all pre-judgment and post-judgment interest at the
11 maximum rate permitted by law;

12 (e) For a judgment awarding PDP all damages, including treble
13 damages, based on any infringement found to be willful, pursuant to 35 U.S.C. §
14 284, together with prejudgment interest;

15 (f) For costs of suit and reasonable attorneys' fees; and

16 (g) For any other remedy to which PDP may be entitled under the
17 law, and any other further relief as the Court may deem appropriate.

18 Respectfully submitted,

19 Dated: March 11, 2016

20 SHEPPARD, MULLIN, RICHTER
21 & HAMPTON LLP

22 By /s/ Daniel N. Yannuzzi
23 DANIEL N. YANNUZZI
24 MICHAEL MURPHY
25 Attorneys for Plaintiff
26 PERFORMANCE DESIGNED
27 PRODUCTS LLC.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

PDP requests a trial by jury on all issues so triable in this action.

Respectfully submitted,

Dated: March 11, 2016

SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP

By /s/ Daniel N. Yannuzzi
DANIEL N. YANNUZZI
MICHAEL MURPHY
Attorneys for Plaintiff
PERFORMANCE DESIGNED
PRODUCTS LLC.